

Decision 04-05-051 May 27, 2004

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application for Expedited *Ex Parte* Approval of  
Transfer of Control of Teligent, Inc. and Teligent  
Services, Inc. to Aspen Partners – Series A, A  
Series of Aspen Capital Partners, L. P.

Application 04-04-007  
(Filed April 5, 2004)

**OPINION AUTHORIZING TRANSFER OF CONTROL OF TELIGENT, INC.  
AND TELIGENT SERVICES INC. TO ASPEN PARTNERS – SERIES A**

**Summary**

This decision grants the joint application of Teligent, Inc. (Teligent), Teligent Services, Inc. (TSI) and Aspen Partners – Series A (Aspen – Series A), a series of Aspen Capital Partners, L. P. (Aspen) for expedited approval of the indirect transfer of control of TSI to Aspen – Series A, pursuant to Sections 852 and 854.<sup>1</sup>

**Parties to the Transaction**

Teligent is a privately held corporation organized under the laws of the state of Delaware with its principal business office located in Hendon, Virginia. As part of its business, Teligent develops digital microwave networks that provide customers with high band width, low-cost telecommunications services. Teligent does not hold a certificate of public convenience and necessity (CPCN) to provide telecommunications services in California.

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<sup>1</sup> All Code references are to the Public Utilities Code, unless otherwise stated.

TSI is a wholly-owned operating subsidiary of Teligent and currently offers resold long distance service in all 50 states and the District of Columbia. TSI holds CPCNs granted by the Commission to operate both as a facilities-based and a non-facilities based competitive local exchange and local long distance carrier in California.<sup>2</sup> TSI also provides private line and broadband data services using fixed microwave facilities in 74 markets in the United States.

Aspen – Series A is a “series” of Aspen. Aspen is a limited partnership organized under the laws of Delaware. Although Aspen – Series A does not have a separate certificate of limited partnership, Aspen’s certificate of limited partnership indicates that each series of limited partnership interests has separate rights, powers and duties with respect to the property and obligations of Aspen and the associated profits and losses. Entities that hold a partnership interest in Aspen – Series A do not necessarily hold an interest in Aspen.

Aspen – Series A’s primary business is to provide financial investment and management services. Aspen – Series A is controlled by Nikos Hecht, the managing member of Aspen Capital, LLC, which holds a general partnership interest in Aspen – Series A. Mr. Hecht holds 62.01% of the equity in Aspen – Series A. Aspen Offshore Ltd. holds a 26.26% limited partnership interest in Aspen – Series A. No other entity or individual holds an interest of 10% or greater in Aspen – Series A.

### **Proposed Transaction**

Under this transaction, the transfer of control of TSI will be indirectly transferred to Aspen – Series A through a stock purchase transaction involving

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<sup>2</sup> See Decision (D.) 97-12-078 and D.99-10-025.

Teligent and Aspen – Series A. TSI will continue to hold its CPCN to provide facilities-based and resold local and intraLATA and interLATA long distance telecommunications services in California.

Both Teligent and TSI previously filed a petition for Chapter 11 bankruptcy.<sup>3</sup> In September 2002, Teligent emerged from bankruptcy with Aspen – Series A and other creditors as owners of Teligent. According to the application, Aspen – Series A currently holds a 21.89% ownership interest in Teligent. Upon approval of this transaction, Aspen – Series A will hold an approximately 95.31% ownership interest in Teligent.

Applicants represent that this change in ownership will benefit TSI and its customers, by giving TSI potential access to the financial resources of Aspen – Series A.

The applicants further represent that the transaction will be transparent to customers. There will be no change in the name or management of TSI, because the transaction will be completed at the parent company level only. Customers will continue to receive service from TSI under the same rates, terms, and conditions after the transaction is approved.

## **Discussion**

Under Section 852, no public utility, and no subsidiary, affiliate of, or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, organized or existing under the laws of this state, without prior Commission authorization. Section 854 further requires Commission authorization before a

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<sup>3</sup> See D.01-10-062 and D.04-02-012.

company may “merge, acquire, or control . . . any public utility organized and doing business in this state . . . “. The purpose of these and related sections is to enable the Commission, before any transfer of a public utility is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Although Aspen – Series A does not hold a CPCN, TSI has a CPCN to operate as a local exchange and interexchange carrier. We therefore apply the requirements for such authority to Aspen – Series A.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm’s start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Aspen – Series A has provided financial statements and other evidence that demonstrates that it has sufficient resources to meet our financial requirements. Since TSI is expected to continue to operate under the same management, and Teligent and TSI have significant experience in the

telecommunications field,<sup>4</sup> we find that our requirement for technical expertise is satisfied, for the purposes of this transaction only.<sup>5</sup> The transaction will improve TSI's access to capital, which should improve TSI's financial position and ability to serve customers in this state.<sup>6</sup> In addition, it will be transparent to customers. Therefore, the proposed transaction is in the public interest.

Therefore, we will grant the application pursuant to Sections 852 and 854.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3132 dated April 22, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Comments on Draft Decision**

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

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<sup>4</sup> In D.97-12-078, we found that Teligent met our requirements for technical and/or managerial expertise to offer telecommunications services in this state. TSI will remain a subsidiary of Teligent after this transaction is completed.

<sup>5</sup> We made no determination that Aspen – Series A would otherwise meet the technical and managerial requirements for authorization to provide telecommunications services in this state.

<sup>6</sup> We note that TSI previously discontinued service to business customers in the San Francisco and Sacramento areas because TSI did not have sufficient financial resources to continue to serve these customers. See D.01-10-062.

### **Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. TSI is a wholly owned subsidiary of Teligent.
2. Although Teligent does not hold a CPCN to provide telecommunications services, the Commission has previously found that Teligent meets the requirements for technical and managerial expertise as necessary to provide telecommunications services in this state.
3. By D.97-12-078 and D.99-10-025 , TSI was granted a CPCN to operate in California as a limited facilities-based and an interexchange carrier.
4. Aspen – Series A does not hold a CPCN to provide telecommunications services in this state.
5. As a result of the transaction, Aspen – Series A will have an approximately 95.31% ownership interest in Teligent and will therefore have ultimate control of Teligent and TSI.
6. There will be no change in the name or management of TSI as a result of the transaction.
7. TSI Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
8. Aspen – Series A has sufficient financial resources to meet the Commission’s requirements to provide facilities-based and resold local exchange and interexchange services.
9. Since Teligent and TSI will potentially have access to Aspen – Series A’s financial resources, this transaction will improve the financial stability of Teligent and TSI.

10. Since Aspen – Series A will own Teligent, which has substantial experience in the telecommunications field, and TSI's management will remain the same, Aspen – Series A has met the requirements for technical and managerial expertise to provide telecommunications services, for the purposes of this transaction only.

11. Notice of this application appeared on the Commission's Daily Calendar on April 9, 2004. There were no protests to this application.

12. No hearings are necessary.

### **Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Aspen – Series A meets the Commission's requirements for the issuance of a CPCN to provide facilities-based and resold local exchange and interexchange telecommunications services, for the purposes of this transaction only.

3. This transaction is in the public interest.

4. In order to avoid delaying this transaction, the approval of the application should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Sections 852 and 854, the joint application of Teligent, Inc., (Teligent) , Teligent Services, Inc., (TSI), and Aspen Partners – Series A (Aspen – Series A) for approval of the indirect transfer of control of TSI to Aspen – Series A is approved.

2. This proceeding is closed.

This order is effective today.

Dated May 27, 2004, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners